THE SECRETARY OF STATE
WASHINGTON

OLC #78-2224/1

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OLC Rec'd 16 Jun 78

Dear Mr. Chairman:

On June 6, 1978, the House of Representatives passed H.R. 12240, the Intelligence Community Authorization Act for FY 1979, which includes a Title IV, which would establish certain reporting requirements on admission of aliens to the United States. This House bill is essentially the same as S. 2939 which the Senate Permanent Select Committee on Intelligence reported out on April 20, 1978, except that the Senate bill does not include any provisions analogous to the House bill's Title IV.

The Department of State is opposed to Title IV of H.R. 12240 and opposes the inclusion of similar language in the Senate intelligence authorization bill. I am authorized to inform you that the Attorney General, the Director of the Federal Bureau of Investigation and the Director of Central Intelligence also oppose enactment of Title IV into law. Title IV of H.R. 12240 would require the Attorney General to notify the intelligence and judiciary committees of Congress in each instance where an alien is admitted to the United States following the Attorney General's notification to the Secretary of State that the alien is excludable under certain provisions of Section 212(a) of the Immigration and Nationality Act.

Visas are issued by United States Consular Officers after evaluating an applicant's eligibility. When a person is issued a visa he or she is authorized to travel to the United States. Upon arrival the Immigration and Naturalization Service -- a Department of Justice component -- makes the final decision on admission to the United States. Some thirty grounds for visa denial are set forth in Section 212(a) of the Immigration and Nationality Act.

The Honorable
Birch Bayh, Chairman,
Permanent Select Committee on Intelligence,
United States Senate.

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State Dept. review completed

The specific provisions of Section 212(a) which are the subject of Title IV of H.R. 12240 (paragraphs (27), (28) and (29)), render applicants ineligible for visas for a variety of political and/or security reasons. Ineligibility under (27) and (29) may not be waived. Ineligibility under (28) may be waived by the Department of Justice for temporary visitors, but the Attorney General is without power to waive inadmissability under (27) or (29). In fact, the McGovern amendment to the Foreign Relations Authorization Act for FY 1978 (Sec. 112, 91 Stat. 848) requires the Secretary of State to recommend waivers in cases where ineligibility derives solely from membership in proscribed organizations.

For some time the Federal Bureau of Investigation and the Department of State's Bureau of Consular Affairs have disagreed on the application of Sections 212(a) (27) and (29) of the Immigration and Nationality Act in certain individual cases. These differences are now being addressed at senior levels of the Departments of Justice and State and the Attorney General and I believe they will soon be resolved.

From an intelligence point of view, if the reporting requirements of Title IV of H.R. 12240 were to take effect, we could expect the Soviets and others to retaliate against United States intelligence officers by frustrating their freedom of movement.

If Title IV of H.R. 12240 becomes law, the Soviets and other Eastern countries could perceive its implementation as an action hostile to free movement between East and West in contradiction of the Helsinki Accords. Eastern Bloc retaliation could take the form of additional procedural burdens for Western visitors.

We believe that the general oversight functions of the Congress are now sufficient to address any difficulties in the process for admitting non-immigrants. Moreover, the Congress is currently considering major new legislation in the intelligence area and Title IV of H.R. 12240 is just not needed at this time.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

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